

Judge N. Gertner
04-40232
USDC MA

MANDATE

United States Court of Appeals For the First Circuit

No. 05-1419

DARRYL FORD,

Petitioner, Appellant,

v.

DAVID L. WINN, WARDEN, FMC DEVENS,

Respondent, Appellee.

Before

Boudin, Chief Judge,
Torruella and Howard, Circuit Judges.

JUDGMENT

Entered: September 6, 2005

After a thorough review of the record and of the parties' submissions, we allow the government's motion for summary disposition, and we affirm.

We lack jurisdiction to review the district court's dismissal of the case, because the notice of appeal was not timely filed. See Fed. R. Civ. P. 4(a)(1)(B). The appeal period was not stayed by the filing of the "motion for extension of time," because that motion was not filed within 10 business days of judgment in accordance with Fed. R. Civ. P. 59(e). See Fed. R. App. P. 4(a)(4)(A)(iv). We have reviewed the motion for extension of time and the "motion for reconsideration" - both of which were filed within the 60-day appeal period - in light of Haines v. Kerner, 404 U.S. 519 (1972), but we see nothing in those filings which would allow us to treat either of them as a notice of appeal or as a motion for extension of time within which to file a notice of appeal. Accordingly, we have no jurisdiction to review the original decision dismissing this case.

We do have jurisdiction to review the denial of the motion for extension of time and the "motion for reconsideration." The district court correctly denied the motion for extension of time, as it had no authority to allow such a motion. See Rivera v. M/T Fossarina, 840 F.3d 152, 154 (1st Cir. 1988). Accordingly, the court properly denied the "motion for reconsideration," because it was untimely under Fed. R. Civ. P. 59(e).

Finally, we note that even if appellant had met the deadlines in question, his claim does not appear to have been meritorious. See Padilla v. United States, 416 F.3d 424 (5th Cir. 2005) (claim that sentence was imposed in violation of Blakely v. Washington, 542 U.S. 296 (2004), and United States v. Booker, 125 S. Ct. 738 (2005), is not cognizable under 28 U.S.C. § 2241).

We have considered the additional arguments submitted in appellant's "motion to amend," but nothing therein changes our analysis or our ultimate disposition of this matter. Accordingly, the "motion to amend" is denied.

Affirmed. See 1st Cir. R. 27(c).

By the Court:

Entered and Issued as Mandate
Under Fed. R. App. P. 41.

Richard Cushing Donovan, Clerk


Deputy Clerk

Date: 10/31/05

Richard Cushing Donovan, Clerk.

MARGARET CARTER

By: _____
Chief Deputy Clerk.

[cc: Darryl Ford, Michael Sullivan, USA,
Dina Michael Chaitowitz, AUSA, George Henderson II, AUSA]